

COMMENTS IN OPPOSITION

Regarding the proposed rule change submitted by the Almond Board of California

Docket number FV06-981-2 PR

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I am submitting the following comments in opposition of the proposed rule to reduce the inedible tolerance from 1% to .5%. I want to be clear that my opposition is only to the proposed reduction of inedible tolerance and I express them on behalf of myself and other industry members that have contacted me and expressed their opposition. I am in full support of all other industry actions on this important issue. Thank you for your time and consideration. I can be reached at (559) 280-2148.

Dean Nelson

ITEMS OF CONCERN ON PROPOSED RULE CHANGE:

Board Members Dean Nelson, Christine Long and Will Hunter voted against the proposed action to reduce inedible tolerance from 1% to .5% but are in full support of the other two motions made to address the important aflatoxin issue.

Dean Nelson serves as Chairman of the Food Quality and Safety Committee and was not in attendance at the FQ&S committee meeting when the initial discussion occurred and the committee brought forth the motion in question. Chairman Nelson did however submit written disagreement/opposition and points of discussion that were not brought forward for committee consideration due to staff error. Subsequent to this action moving out of the committee, several committee members have stated that they do not feel the action will reduce serious defect levels in loads shipped, and would have voted differently had the differing perspective and knowledge of others disagreeing been provided.

Because of staff error/neglect in failing to submit this important information and counter perspective, the issue did not have opportunity for full industry input and evaluation at the critical point of initial/full evaluation. The issue has been discussed most recently in a teleconference committee meeting and despite the majority of members stating they do not feel the action will have the intended impact of reducing serious defects in loads shipped, they are now resigned to letting the rule change go forward since it has already submitted to USDA. It is requested that this issue be sent back to the committee so that complete evaluation and discussion can take place.

Concerns regarding the rule change include but are not limited to: 1) It may provide an unfair advantage for larger processors that have blanching facilities, a critical issue that was not discussed by the committee 2) It will not remove any additional true inedible product as suggested in the 10 point justification, as handler behavior is driven by cost of separating edible product from inedible product not by the inedible tolerance level. 3) This proposed rule change is inconsistent with a voluntary sampling plan for aflatoxin

that does not require testing for shipment of product that has under 2% inedible in the shipment. It is completely inconsistent to suggest in recommended industry activities that it is not necessary to test a shipment that contains 2% or less inedible defect for aflatoxin but at the same time suggest it is necessary to reduce the inedible tolerance from 1% to .5% 4) The proposed rule change is also inconsistent with the highest premium USDA grade of Fancy that allows 1% inedible/serious defect.

It is agreed by all parties, and proven by scientific evaluation that there is a clear correspondence between high levels of insect damage in almonds and aflatoxin contamination. It has also been proven, and our industry experience demonstrates that product that has 1% serious damage has the lowest risk of all USDA grades. If it were a realistic option to require all handlers to ship 1% or less WD the industry would immediately implement the change and reduce address the concern of aflatoxin in our product. If this were possible, by sheer definition and easy calculation, the industry would be allowed to ship 1% inedible and a 1% tolerance for inedible almonds would be required. As a result it is clear that the reasoning for reducing the inedible tolerance to .5% is misguided, as 1% product is proven scientifically to be the lowest risk product we offer. Rapid alert notices in Europe as reported by Almond Board staff also demonstrates that the science and conclusions that 1% inedible product is the safest product the industry offers is sound.

Item #3 of the 10 point justification does not accurately or fully describe the definition of the problem being addressed. The problem is tied to high insect damage lots (over 2%). The conclusion that reducing the inedible tolerance to .5% will reduce the amount of inedible almonds present in the marketplace is false and misleading. Handlers who process almonds make decisions on what product to ship based on the cost of separating serious defects from good product, and not on the inedible tolerance level. If the cost of removing the defect is higher than the value of a higher value grade, (made by removing the defect) the defect will not be removed. Business people think in terms of economics and value they can return cost effectively.

No handler in the industry consistently ships the highest grade of US Fancy that limits serious damage to 1% as it is very difficult to obtain that quality and serious damage threshold required. Changing the inedible tolerance to ½% will not change that behavior. **AS A RESULT IT IS CLEAR THAT INEDIBLE ALMONDS WILL NOT BE REMOVED AND THE RISK OF AFLATOXIN WILL NOT BE REDUCED BY IMPLEMENTATING THIS RULE CHANGE.** The 10-point justification blurs the two motions being presented and attempts to attach industry feelings of consensus of wanting to reduce aflatoxin, as support of reducing the tolerance to ½% when it does not exist.

Discussion in item #4 further distorts/limits the understanding of an individual trying to evaluate this important issue. It is incorrect to state or imply that having an inedible tolerance of 1% versus .5% results in a potential economic loss on rejected loads of \$9,000 per load. It is simply not true. What is not clearly mentioned, is the fact that the economic losses being estimated at \$9,000 per load are almost wholly (high 95+ percentile) in loads with insect damage over 2%. Industry experience and almond board

staff knowledge confirms that product with 1% inedible product or less causes the lowest risk of aflatoxin contamination of all USDA grades.

If shipment records of any almond handler were investigated, it would demonstrate that given a normal insect level of 2% for the industry, no handler ships less than 1% inedible in their product on average for the season. Customers in premium markets accept US Fancy grade and/or product with 1% or less serious defect as premium quality goods. How can USDA require an inedible tolerance level that is inconsistent with, and less than ½ the level of serious defect allowed in the highest premium USDA grade? Further, since no handler will ship ½% or less of inedible almonds on average, good product that does not pose any aflatoxin risk will (by easy calculation) out of necessity be disposed of to meet a well intended but misguided effort to reduce aflatoxin risk.

The economic loss of imposing this rule at current market rates is calculated as follows: Assuming a 1 billion pound crop, an unnecessary reduction in the inedible tolerance by ½% equals 5 million pounds (good product that does not have insect damage/aflatoxin risk). The 5 million pounds of serious defect free product at today's market value of \$2.60 - \$2.85 per lb results in an economic loss to our industry and its growers of \$13-14 million dollars.

I encourage you to contact the almond board staff and ask this question: "Is there any information, or scientific study that indicates that almonds with 1% inedible tolerance causes significant economic loss or aflatoxin risk?" The answer will be no. **I also encourage you to contact any handler and ask them if the rule change will cause them to actually ship ½% or less serious defect in their loads this coming season. The answer will again be no.** The cost of separation outweighs the benefit of the value of a higher grade.

Industry members who support this rule change state that the reduction may cause handlers to ship less worm damage hoping that 1) The change might have an influence on a handler to ship less serious damage when presented to industry in conjunction with increasing the true inedible from .5% to 1%. When confronted with the straight forward questions of 1) whether or not they will ship ½% or less serious defect on all their loads or 2) if they can demonstrate by calculation how they will ship less serious defect and not be forced to ship good product to meet the requirement, they will be unable to do so. Most likely the commentwhat can it hurt?....will then come. The answer to that question is this. Rule making for the sake of rule making poorly thought out without adequate evaluation will not have an impact on the behavior of any handler, and will result in \$13-14 million less value in our industry. The fact that supporters of this rule are unable to commit to shipping ½% or less defect in the loads they control, and are also unable to demonstrate by easy calculation that the industry is not being forced to dispose of 5MM lbs of good product, reveals the blatant ineffectiveness and weakness of the proposed rule change.

The USDA should not accept a rule change that is based in such weak thought and on the basis that it probably won't hurt us. The critical point of fact that must be recognized

when evaluating this decision is that loads with insect damage with 1% inedible or less have the lowest number of aflatoxin rejections of all other grades and clearly does not address the industry concern and risk.

Item #6 of the 10 point justification that contemplates if there are other viable and more effective solutions to the issue does not state that the industry has already had preliminary discussions about restricting or increasing sampling/monitoring of loads with insect damage in excess of 2% into Europe. We have much more work to do on this issue and need all industry to have adequate time and opportunity for input for solutions that will actually have an impact. Rushing to implement a rule as a knee jerk reaction to have something to show a delegation of European visitors from the office of Food and Veterinary office in September should not be our motivation. Finding actual solutions as an industry and openly discussing the problem must be allowed to occur.

Item #7 once again does not accurately describe the results of this action as it will not impact handler behavior as discussed above.

Item #8 was not discussed at the committee level and needs further discussion. As stated above, concerns have been expressed by industry members that this action may provide an unfair advantage to larger operations and needs to be evaluated further.

Item # 9 is misleading. I have personally made numerous attempts to communicate my concerns to staff who repeatedly indicate in written form that no comments were received. The statement that no comments were made is misleading as it implies there must therefore be broad support for the issue. In reality USDA must remember that the industry committee's are volunteer and adequate time and numerous requests are needed to assure full contribution is achieved from the industry.

Item #10. The concern of many handlers that it is inconsistent to allow shipment of 2% product is not addressed as suggested in the 10 point justification with a compromise of .5%. The statement of risk in this paragraph is also misleading as the risk of rejection, potential for increased surveillance and possible increased restrictions are not tied to product with 1% or less inedible, the risk is with product over 2% inedible. The blending of these conclusions and concerns consistently misleads the facts in the 10-point explanation.

I am disappointed to observe in this situation how staff neglect/error resulted in this important issue not being given full opportunity for evaluation and discussion. And now only because the rule has been submitted to USDA committee members are **resigned to allow the rule to go forward because of process and not because of conviction** and do not believe that the rule will make a difference. It is also disheartening to observe, that this motion is being touted as passing the committee unanimously when now the majority of committee members do not feel the action will impact handler behavior. Even supporters of the rule change when asked, will not commit that the rule change will change their behavior to ship less serious defect. This well intentioned rule made in haste misses the mark. Today the proposed rule change does not have unanimous support from

the committee or board. I understand it is embarrassing to retrieve a motion once it is public, but cannot support an action that will not have the intended impact, may be unfair to handlers that do not have blanching/manufacturing operations, and will cost the industry significant economic loss of potential revenue. It must also be clearly understood, that the unanimous vote being touted so widely, does exist at this time and was the result of a committee that did not have the benefit of full input at the critical first point of time that was set aside for thorough evaluation.

It will be even more concerning if 1) the USDA does not return this issue to the committee, with clear direction to the Board and Committee that the USDA requires a standard of complete evaluation and industry input before any issue is submitted, 2) The USDA fails to question the logic and effectiveness of imposing a rule that requires disposition of good product to meet a misguided effort 3) USDA requires a rule change that is inconsistent with the highest possible USDA grade of FANCY.

As stated in the initial paragraph above, the concerns and opposition described in this letter are in representation of myself and other industry members who have expressed their concerns throughout this process.

Respectfully submitted
Dean Nelson